

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HENRY B. GARNIER,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.

Case No. C06-5285RBL

ORDER DIRECTING  
SERVICE AND RETURN,  
§ 2254/2241 PETITION

The petitioner in this action is seeking federal habeas corpus relief pursuant to both 28 U.S.C. § 2254 and 28 U.S.C. § 2241. This case has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636 (b) (1) (A) and 636 (b) (1) (B) and Local Magistrates' Rules MJR 3 and MJR 4. Petitioner challenges his sentence and the conditions of his confinement claiming he is housed in a prison with "bad air." Petitioner alleges he has cancer as a result of the air. (Dkt. # 1).

The court will not consider petitioner's request for monetary damages as monetary damages are not available in a habeas action. Any claim for damages is premature. Heck v. Humphrey, 512 U.S. 477 (1994).

(1). The clerk shall arrange for service by certified mail upon respondent, a copy of the ORDER FOR SERVICE AND RETURN, 2254/2241 PETITION - 1

1 petition, of all documents in support thereof, and of this Order. All costs of service shall be  
2 advanced by the United States. The Clerk shall assemble the necessary documents to effect service.  
3 The Clerk shall send petitioner's counsel a copy of this Order, the General Order. The clerk will  
4 also sen a courtesy copy of the petition to the Washington State Attorney General's Office Criminal  
5 Justice Division.

6 (2) Within forty-five (45) days after such service, respondent shall file and serve an  
7 answer in accordance with Rule 5 of the Rules Governing § 2254 Cases in United States District  
8 Courts. As part of such answer, respondents should state whether petitioner has exhausted available  
9 state remedies, whether an evidentiary hearing is necessary, and whether there is any issue of abuse  
10 of delay under Rule 9. Respondent shall not file a dispositive motion in place of an answer without  
11 first showing cause as to why an answer is inadequate. Respondent shall file the answer with the  
12 Clerk of Court and serve a copy of the answer upon petitioner.

13 (3) The answer will be treated in accordance with Local Rule CR 7. Accordingly, upon  
14 receipt of the Answer the Clerk will note the matter for consideration on the fourth Friday after the  
15 answer is filed, petitioner, through counsel, may file and serve a response not later than on the  
16 Monday immediately preceding the Friday appointed for consideration of the matter, and respondent  
17 may file and serve a reply brief not later than on the Thursday immediately preceding the Friday  
18 designated for consideration of the matter.

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21 DATED this 14<sup>th</sup> day of July, 2006.

22  
23 /s/ J. Kelley Arnold  
24 J. Kelley Arnold  
25 United States Magistrate Judge  
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